

MT LEGISLATIVE HISTORY

Chapter 119 19 79

Bill (H) 194 S \_\_\_\_\_

Original bill & hist.    C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Jan 19 ✓ C

Hearing Date(s) Feb 23 ✓ C

Jan 24 ✓ C

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              C

Date Out Jan 24 ✓ C

Feb 23 ✓ C

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Did this bill originate in an interim committee?    Yes    No

Committee                           

Report

1 HOUSE BILL NO. 194  
 2 INTRODUCED BY Mannell  
 3 BY REQUEST OF THE CODE COMMISSIONER  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 6 LAWS IN TITLE 1, MCA, COMPOSED OF GENERAL LAWS AND  
 7 DEFINITIONS; REPEALING SECTIONS 12-212 AND 93-1101-1, R.C.M.  
 8 1947; AND REPEALING SECTIONS 1-5-501 THROUGH 1-5-507, MCA."  
 9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 11 NEW SECTION. Section 1. Relationship by affinity. (1)  
 12 Unless the context requires otherwise, in this code  
 13 "affinity" means the relation which one spouse has, by  
 14 virtue of the marriage, to blood relatives of the other.  
 15 Therefore, a person has the same relation by affinity to his  
 16 spouse's blood relatives as his spouse has to them by  
 17 consanguinity and vice versa.  
 18 (2) Degrees of relationship by affinity are computed  
 19 in the same manner as degrees of relationship by  
 20 consanguinity.  
 21 (3) Notwithstanding subsection (1), the term  
 22 "affinity" includes the relation of husband and wife.  
 23 Husband and wife are considered to be related by affinity in  
 24 the first degree.  
 25 Section 2. Section 1-2-201, MCA, is amended to read:

1 "1-2-201. Statutes — effective date. (1) Every  
 2 statute, unless a different time is prescribed therein,  
 3 takes effect on the first day of July 1 of the year of  
 4 following its passage and approval.  
 5 (2) "Passage", as used in subsection (1), means the  
 6 enactment into law of a bill which has passed the  
 7 legislature either with or without the approval of the  
 8 governor, as provided in the constitution."  
 9 Section 3. Section 1-5-101, MCA, is amended to read:  
 10 "1-5-101. By whom and where acknowledgments proof or  
 11 acknowledgment may be taken. (1) The proof of or  
 12 acknowledgment of an instrument may be made at any place  
 13 within this state before a justice or clerk of the supreme  
 14 court or a judge of the district court.  
 15 (2) The proof of or acknowledgment of an instrument  
 16 may be made in this state within the city, county, or  
 17 district for which the officer was elected or appointed,  
 18 before either:  
 19 (a) a clerk of a court of record;  
 20 (b) a county clerk;  
 21 (c) a notary public;  
 22 (d) a justice of the peace; or  
 23 (e) a United States commissioner."  
 24 Section 4. Section 1-5-102, MCA, is amended to read:  
 25 "1-5-102. Acknowledgments Proof or acknowledgment

4

1 taken outside this state. The proof of ~~or~~ acknowledgment of  
2 an instrument may be made ~~without~~ outside this state but  
3 within the United States and within the jurisdiction of the  
4 officer, before either:

5 (1) a justice, judge, or clerk of any court of record  
6 of the United States;

7 (2) a justice, judge, or clerk of any court of record  
8 of any state or territory;

9 (3) a commissioner appointed by the governor of this  
10 state for that purpose;

11 (4) a notary public; or,

12 (5) any other officer of the state or territory where  
13 the acknowledgment is made, authorized by its laws to take  
14 such proof or acknowledgment."

15 Section 5. Section 1-5-105, MCA, is amended to read:

16 "1-5-105. Notarial acts by officers in the armed  
17 services. (1) In addition to the acknowledgment of  
18 instruments and the performance of other notarial acts in  
19 the manner and form ~~and~~ as otherwise authorized by law,  
20 instruments may be acknowledged, documents attested, oaths  
21 and affirmations administered, depositions and affidavits  
22 executed, and other notarial acts performed before or by any  
23 commissioned officer in active service of the armed forces  
24 of the United States with the rank of second lieutenant or  
25 higher in the army or marine corps, with the rank of ensign

1 or higher in the navy or coast guard, or with equivalent  
2 rank in any other component part of the armed forces of the  
3 United States, by at the request of any person who either:

4 (a) is a member of the armed forces of the United  
5 States;

6 (b) is serving as a merchant seaman outside the  
7 limits of the continental United States ~~included within the~~  
8 ~~48 states and the District of Columbia~~ excluding Alaska;  
9 or

10 (c) is outside the limits of the United States of  
11 America by permission, assignment, or direction of any  
12 department or official of the United States government in  
13 connection with any activity pertaining to the prosecution  
14 of any war in which the United States is then engaged.

15 (2) Such acknowledgment of instruments, attestation of  
16 documents, administration of oaths and affirmations,  
17 execution of depositions and affidavits, and performance of  
18 other notarial acts, heretofore or hereafter made or taken,  
19 are ~~hereby declared to be~~ valid and binding; and  
20 instruments and documents so acknowledged, authenticated, or  
21 sworn to ~~shall be~~ are admissible in evidence and eligible to  
22 record ~~be recorded~~ in this state under the same  
23 circumstances and with the same ~~force and~~ effect as if such  
24 acknowledgment, attestation, oath, affirmation, deposition,  
25 affidavit, or other notarial act had been made or taken

1 within this state before or by a duly qualified officer or  
2 official as otherwise provided by law.

3 (3) In the taking of acknowledgments and the  
4 performing of other notarial acts requiring certification, a  
5 certificate endorsed upon or attached to the instrument or  
6 documents which shows the date of the notarial act and which  
7 states, in substance, that the person appearing before the  
8 officer acknowledged the instrument as his act or made or  
9 signed the instrument ~~or--document~~ under oath ~~shall be~~ is  
10 sufficient for all intents ~~and purposes~~. The instrument or  
11 document ~~shall~~ is not be rendered invalid by the failure to  
12 state the place of execution or acknowledgment.

13 (4) The signature, rank, and branch of service or  
14 subdivision thereof of any such commissioned officer ~~shall~~  
15 ~~must~~ appear upon such ~~the~~ instrument ~~or--document~~ or  
16 certificate, and no further proof of the authority of such  
17 ~~the~~ officer ~~so to so act shall be~~ is required. Such action  
18 by such ~~the~~ commissioned officer ~~shall be~~ is prima facie  
19 evidence that the person making such ~~the~~ oath or  
20 acknowledgment is within the purview of this section."

21 Section 6. Section 1-5-301, MCA, is amended to read:

22 "1-5-301. Who may prove execution of instrument. Proof  
23 of the execution of an instrument ~~when which has~~ not been  
24 acknowledged may be made either by:

25 (1) ~~the--party--executing--it--or--either~~ all of the

1 ~~parties who executed it or any one of them;~~

2 (2) a subscribing witness; or

3 (3) other witnesses in cases mentioned in 1-5-302."

4 Section 7. Section 1-5-303, MCA, is amended to read:

5 "1-5-303. Facts which must be shown when offering  
6 proof of handwriting. The evidence taken under 1-5-302 must  
7 satisfactorily prove to the officer the following facts:

8 (1) the existence of one or more of the conditions  
9 mentioned in 1-5-302;

10 (2) that the witness testifying knew the person whose  
11 name purports to be subscribed to the instrument as a party  
12 and is well acquainted with his signature ~~and--that--it--is~~  
13 genuine;

14 (3) that the witness testifying personally knew the  
15 person who subscribed the instrument as a witness and is  
16 well acquainted with his signature ~~and--that--it--is~~ genuine;  
17 and

18 ~~(4) that the signature or signatures in question are~~  
19 genuine; and

20 ~~(4)(5)~~ the place of residence of the witness."

21 Section 8. Section 1-5-304, MCA, is amended to read:

22 "1-5-304. Powers of officer taking proof of execution.

23 ~~(1)~~ Officers authorized to take the proof of instruments are  
24 authorized in such proceedings to:

25 ~~(a)(1)~~ administer oaths or affirmations as prescribed

1 in the Code of Civil Procedure by law;  
 2 (b)(2) employ and swear interpreters; and  
 3 (c)(3) issue subpoenas as prescribed in the Code of  
 4 Civil Procedure by law.  
 5 (d) --punish for contempt as prescribed in the Code of  
 6 Civil Procedure.  
 7 (2) --The civil damages and forfeiture to the party  
 8 aggrieved are prescribed in the Code of Civil Procedure."  
 9 Section 9. Section 1-5-416, MCA, is amended to read:  
 10 "1-5-416. Powers and duties. It is the duty of a  
 11 notary public shall:  
 12 (1) when whenever requested, to demand acceptance and  
 13 payment of foreign, domestic, and inland bills of exchange  
 14 or promissory notes and protest the same for nonacceptance  
 15 or nonpayment and to exercise such other powers and duties  
 16 as by the law of nations and according to commercial usages  
 17 or by the laws of any other state, government, or country  
 18 may be performed by notaries and keep a record of such acts;  
 19 (2) to take the acknowledgment or proof of any powers  
 20 power of attorney, mortgages mortgage, deeds deed, grants  
 21 grant, transfers transfer, and or other instruments--of  
 22 writing instrument executed by any person and to give a  
 23 certificate of such proof or acknowledgment, endorsed on or  
 24 attached to the instrument;  
 25 (3) to take depositions and affidavits and administer

1 oaths and affirmations in all matters incident to the duties  
 2 of the his office or to be used before any court, judge,  
 3 officer, or board in this state;  
 4 (4) when whenever requested and upon payment of his  
 5 fees therefor, to make and give a certified copy of any  
 6 record in his office;  
 7 (5) to provide and keep an official seal, upon which  
 8 must be engraved the name of the state of Montana and the  
 9 words "Notarial Seal", with the surname of the notary and at  
 10 least the initials of his Christian given name;  
 11 (6) to authenticate with his official seal all  
 12 official acts. in all cases when whenever the notary public  
 13 signs his name officially as a notary public, he must shall  
 14 add to his signature the words "Notary Public for the State  
 15 of Montana, residing at .... (stating the name of his post  
 16 office)" and must shall endorse upon the instrument the date  
 17 of the expiration of his commission."  
 18 Section 10. Section 1-5-505, MCA, is amended to read:  
 19 "1-5-505. Powers of commissioners. Every commissioner  
 20 of deeds has power within the state for which he was  
 21 appointed to:  
 22 (1) administer and certify oaths;  
 23 (2) take and certify depositions and affidavits;  
 24 (3) take and certify the acknowledgment of or proof of  
 25 powers of attorney, mortgages, transfers, grants, deeds, or

1 other instruments for record;

2 (4) provide and keep an official seal, upon which must  
3 be engraved his name, the words "Commissioner of Deeds for  
4 the State of Montana", and the name of the state for which  
5 he is commissioned;

6 (5) authenticate with his official seal all his  
7 official acts."

8 Section 11. Section 1-6-103, MCA, is amended to read:

9 "1-6-103. Variation of oath to suit witness's belief.  
10 ~~{1} Whenever the court before which a person is offered as a~~  
11 ~~witness is satisfied that he has a peculiar mode of~~  
12 ~~swearing connected with or in addition to the usual form of~~  
13 ~~administration which in his opinion is more solemn or~~  
14 ~~obligatory the court may in its discretion adopt that~~  
15 ~~mode~~

16 ~~{2} When a person is sworn who believes in any other~~  
17 ~~than the Christian religion he may be sworn according to~~  
18 ~~the peculiar ceremonies of his religion if there be any~~  
19 ~~such. The court shall vary the mode of swearing to accord~~  
20 ~~with the witness's beliefs whenever it is satisfied that the~~  
21 ~~witness has a distinct mode of swearing."~~

22 Section 12. Section 1-11-102, MCA, is amended to read:

23 "1-11-102. Name of ~~recodification~~ -- citation. The  
24 recodification recodified laws shall be known as the  
25 "Montana Code Annotated" and may be cited as "MCA."

1 Section 13. Section 1-11-103, MCA, is amended to read:

2 "1-11-103. Effect of Montana Code Annotated. (1) The  
3 Montana Code Annotated shall be enacted as a reenactment of  
4 the Revised Codes of Montana, 1947, and the supplements  
5 thereto.

6 (2) The enactment of the Montana Code Annotated shall  
7 not:

8 (a) revive a law repealed or superseded before the  
9 effective date of the Montana Code Annotated;

10 (b) affect an act done, right accrued, or obligation  
11 incurred or imposed by law prior to the effective date of  
12 the Montana Code Annotated;

13 (c) affect any action, suit, or proceeding pending on  
14 such effective date;

15 (d) repeal statutes of a nongeneral, nonpermanent  
16 nature such as severability, construction, validating,  
17 repealing, or similar statutes omitted from the Montana Code  
18 Annotated.

19 (3) The Montana Code Annotated shall be given effect  
20 as a continuation of the Revised Codes of Montana and not as  
21 a new enactment. A defect in title of any act set out in  
22 prior laws and reenacted by the Montana Code Annotated is  
23 cured by such enactment.

24 (4) No implication or presumption of legislative  
25 construction is to be drawn from the classification or

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1 arrangement of the Montana Code Annotated.

2 (5) Unless specifically adopted as such by the  
3 legislature, annotations, code commissioner notes,  
4 catchlines, or other editorial material included in the  
5 Montana Code Annotated may not be construed as part of the  
6 legislative text but are only for the purpose of  
7 convenience, orderly arrangement, and information.

8 (6) After enactment, the Montana Code Annotated,  
9 including all subsequent replacement volumes, shall be prima  
10 facie the official laws of Montana. In case of any  
11 inconsistency in meaning arising through omission or  
12 otherwise between the provisions of the Montana Code  
13 Annotated and the corresponding portion of the official  
14 enrolled bill on file with the secretary of state, effect  
15 shall be given to the official enrolled bill."

16 Section 14. Section 1-11-204, MCA, is amended to read:

17 "1-11-204. Duties of code commissioner. (1) Prior to  
18 January 1, 1979, the code commissioner shall recodify all  
19 the laws of a general and permanent nature appearing in the  
20 codes and session laws and prepare them for publication.

21 (2) Prior to January 1, 1979, the commissioner shall  
22 prepare and submit to the legislature a report which is  
23 certified by the commissioner as the "Official Report of the  
24 Montana Code Commissioner", together with a bill enacting  
25 the Montana Code Annotated. A copy of the report and bill

1 shall be deposited with the secretary of state. The report  
2 shall explain and indicate, in tabular or other form, all  
3 changes made during recodification, other than punctuation  
4 and capitalization, to clearly indicate the character of  
5 each change.

6 (3) ~~Prior to November--1,--1976,--and--prior--to the~~  
7 ~~November 1 of--each--year--thereafter immediately preceding~~  
8 ~~each regular legislative session,~~ the commissioner shall  
9 prepare and submit to the legislative council a report, in  
10 tabular or other form, indicating the commissioner's  
11 recommendations for legislation which will:

- 12 (a) eliminate archaic or outdated laws;
- 13 (b) eliminate obsolete or redundant wording of laws;
- 14 (c) eliminate any duplications in law and any laws  
15 repealed directly or by implication;
- 16 (d) clarify existing laws;
- 17 (e) correct errors and inconsistencies within the  
18 laws.

19 (4) The commissioner shall cause to be prepared for  
20 publication with the Montana Code Annotated the following  
21 material:

- 22 (a) Statutory history of each code section;
- 23 (b) Annotations of state and federal court decisions  
24 relating to the subject matter of the code;
- 25 (c) Such editorial notes, cross-references, and other

1 matter as the commissioner considers desirable or  
 2 advantageous;

3 (d) The Declaration of Independence;

4 (e) The Constitution of the United States of America  
 5 and amendments thereto;

6 (f) Acts of congress relating to the authentication of  
 7 laws and records;

8 (g) The Organic Act of the Territory of Montana;

9 (h) The Enabling Act;

10 (i) The 1972 Constitution of the State of Montana and  
 11 any amendments thereto;

12 (j) The Ordinances relating to federal relations and  
 13 elections;

14 (k) Rules of civil, criminal, and appellate procedure  
 15 and such other rules of procedure as the Montana supreme  
 16 court may adopt; and

17 (l) A complete subject index, a popular name index,  
 18 and comparative disposition tables or cross-reference  
 19 indexes relating sections of the Montana Code Annotated to  
 20 prior compilations and session laws.

21 (5) After publication of the Montana Code Annotated,  
 22 the code commissioner shall:

23 (a) annotate, arrange, and prepare for publication all  
 24 laws of a general and permanent nature enacted at each  
 25 legislative session and assign catchlines and code section

1 numbers to each new section;

2 (b) continue to codify, index, arrange, rearrange, and  
 3 generally update the Montana Code Annotated to maintain an  
 4 orderly and logical arrangement of the laws in order to  
 5 avoid future need for bulk revision;

6 (c) prepare and submit to each legislature a report  
 7 certified as the "Official Report of the Montana Code  
 8 Commissioner--(year)" which indicates, in tabular or other  
 9 form, all changes made during the continuous recodification,  
 10 other than punctuation, spelling, and capitalization, to  
 11 clearly indicate the character of each change made since the  
 12 ~~first publication of the Montana Code Annotated~~ last such  
 13 report.

14 (6) From time to time the commissioner shall confer  
 15 with members of the judiciary and the state bar relative to  
 16 recodification procedures."

17 Section 15. Section 1-11-302, MCA, is amended to read:  
 18 "1-11-302. Updates of Montana Code Annotated. (1) The  
 19 publication of updates to the Montana Code Annotated may be  
 20 as a cumulative supplement or replacement volume or in any  
 21 other format approved by the legislative council.

22 (2) The supplements or replacements shall be  
 23 certified, ~~and reported to the legislature by the~~  
 24 ~~legislative council approved and enacted by the legislature~~  
 25 ~~as prime facie the official laws of Montana~~ published,



1 ~~copyrighted and deposited with the secretary of state and~~  
2 ~~referred to as the Montana Code Annotated.~~ The supplements  
3 and replacements ~~shall~~ become effective on the date  
4 deposited with and certified to the secretary of state."

5 Section 16, Repealer, Sections 12-212 and 93-1101-1,  
6 R.C.M. 1947, are repealed. Sections 1-5-501 through 1-5-507,  
7 MCA, are repealed.

-End-

CONSIDERATION OF HOUSE BILL 182:

This is an act to generally revise and clarify the laws relating to property. Bob Pyfer, staff attorney for the Legislative Council, gave an explanation of this bill.

Senator Towe moved that the bill be amended on page 7, line 9, following the word "interest" by inserting "or interest". The motion carried unanimously.

Senator Towe moved that the bill be amended on page 12, line 24 after "is" by inserting "presumed to be". The motion carried unanimously.

Senator Towe moved that the bill be concurred in as amended. The motion carried unanimously. Senator Turnage moved that this bill be placed on the consent calendar. The motion carried.

DISPOSITION OF HOUSE BILL 184:

A motion was made that this bill be concurred in. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 194:

Joan Mayer from the Legislative Council went over this bill section by section. This is an act to generally revise the laws in Title 1, MCA, composed of general laws and definitions, etc.

Senator Towe moved that the bill be amended on page 2, lines 9 through 25, by striking section 3 in its entirety. The motion carried unanimously.

Senator Turnage moved that the bill be amended on page 2, line 25, by striking "proof or acknowledgment" and inserting "acknowledgments" and on page 3, line 1, by striking "or" and inserting "of". The motion carried unanimously.

Senator Towe moved that on page 9, line 19, following the word "swearing" the bill be amended by inserting "or affirming" and on line 21, after "swearing" inserting "or affirming". The motion carried unanimously.

Senator Turnage moved that the bill be concurred in as amended. The motion carried unanimously.

There being no further business, the meeting was adjourned.

*Event R. Linsch*

46th LEGISLATIVE SESSION - 1979

| NAME                          | PRESENT | ABSENT | EXCUSED |
|-------------------------------|---------|--------|---------|
| Lonsink, Everett R., Chr. (R) | ✓       |        |         |
| Olson, S. A., V. Chr. (R)     | ✓       |        |         |
| Turnage, Jean A. (R)          | ✓       |        |         |
| O'Hara, Jesse A. (R)          | ✓       |        |         |
| Anderson, Mike (R)            | ✓       |        |         |
| Gill, Jack E. (R)             | ✓       |        |         |
| Towe, Thomas E. (D)           | ✓       |        |         |
| Brown, Steve (D)              | ✓       |        |         |
| Van Valkenburg, Fred (D)      | ✓       |        |         |
| Healy, John E. (Jack) (D)     | ✓       |        |         |
|                               |         |        |         |
|                               |         |        |         |
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|                               |         |        |         |
|                               |         |        |         |
|                               |         |        |         |
|                               |         |        |         |
|                               |         |        |         |

Each Day Attach to Minutes.

1. Page 2, lines 9 through 23.

Strike: section 3 in its entirety

Re-number: all subsequent sections

2. Page 2, line 25.

Following: "Acknowledgments"

Strike: "Proof or acknowledgment"

Insert: "Acknowledgments"

3. Page 3, line 1.

Following: "of"

Strike: "or"

Insert: "of"

4. Page 9, line 19.

Following: "swearing"

Insert: "or affirming"

5. Page 9, line 21.

Following: "swearing"

Insert: "or affirming"

# STANDING COMMITTEE REPORT

February 23 1979

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 194

Respectfully report as follows: That House Bill No. 194,  
third reading bill, be amended as follows:

1. Page 2, lines 9 through 23.

Strike: section 3 in its entirety

Renumber: all subsequent sections

2. Page 2, line 25.

Following: "Acknowledgments"

Strike: "Proof or acknowledgment"

Insert: "Acknowledgments"

3. Page 3, line 1.

Following: "of"

Strike: "or"

Insert: "of"

4. Page 9, line 19.  
Following: "swearing"  
Insert: "or affirming"

5. Page 9, line 21.  
Following: "swearing"  
Insert: "or affirming"

And, as so amended,  
BE CONCURRED IN

*PA*

There were two sections that referred to the same thing, so I am recommending that one should be repealed. The definition of person of unsound mind, refers to lunatics, this is obsolete terminology and we are suggesting that it be repealed.

There was no discussion and the hearing closed on House Bill No. 185.

HOUSE BILL NO. 194: Representative Manuel introduced Joan Mayer from the Legislative Counsel who will explain the bill. She passed out suggested amendments. On page 12 the code commissioner will report only every two years.

There was no discussion and the hearing closed on House Bill No. 194.

HOUSE BILL NO. 203: Representative Anderson. This bill is designed to adopt the revised uniform enforcement of foreign judgments act. Montana has three members appointed to this commission. Diana Dowling is one of the members. He explained how the law now works and what this bill would do to change it.

BRUCE MCGINNIS: Department of Revenue. We have prepared a bill identical to this one with the provision limit only to tax judgments. We are in support of the bill. If you pass this bill our bill could be eliminated. This would give us a more effective way of collecting judgments.

J. C. WEINGARTNER: State Bar of Montana. We may have one problem, and gave an example. We can not enforce a gambling debt in Montana. I don't know if this might be a problem. You might want to have something in here that would enforce a gambling debt.

REPRESENTATIVE ANDERSON: We must give full faith and credit according to the U.S. Constitution. A number of states have already enacted this legislation. I would urge your support of the bill.

Then followed discussion about the proposed addition of a section.

MR. MCGINNIS: Montana does not have the uniform act on its books at the present time.

There was discussion about whether this was new law or existing law and the hearing closed on House Bill No. 203.

JUDICIARY COMMITTEE  
EXECUTIVE SESSION  
January 24, 1979

Following the regular meeting the committee went into executive session and took action on the following bills. The meeting was called to order by Chairman Scully at 9:00 a.m. in Room 436 on Wednesday, January 24, 1979. All members were present.

HOUSE BILL NO. 148:

Representative Keyser reported to the full committee the findings of the sub-committee and offered their recommendation. (copy attached) Representative Keyser moved the adoption of the committee recommendation and the motion carried with the vote unanimous.

Representative Keyser moved to table the bill, and Larry Weinburg will prepare a committee bill. The motion carried with the vote unanimous.

SENATE BILL NO. 4:

Mr. Weinburg reported to the committee on research he had been doing. The history did not give much information. He proposed a series of amendments.

Representative Kemmis moved to strike "satisfaction" and insert "discharge and release" wherever it appeared in the bill. The motion carried with the vote unanimous.

Representative Kemmis moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Kemmis moved to place the bill on the consent calendar. The motion carried since the vote was unanimous. The bill will go to the consent calendar.

HOUSE BILL NO. 184:

Representative Kemmis reminded the committee that this was the bill that revises the criminal procedure, both search a person and seize a person, which wording bothered him a great deal. He moved several clean-up amendments wherever the words "persons to be seized" appear. The motion carried with the vote unanimous.

Representative Iverson moved "do pass as amended" and the motion carried with the vote unanimous. Representative Kemmis moved to place the bill on the consent calendar. The motion carried with the vote unanimous. It will go to the consent calendar.

HOUSE BILL NO. 194:

Mr. Weinberg reported on his investigation of affinity (about the 1st degree). Representative Scully explained about the relationships as determined in sub-section (2). It was suggested that on page 8, the section be repealed starting on line 18 and renumber. Representative Keyser moved this amendment and the motion carried with the vote unanimous.



Also on page 3, lines 9 and 10, to strike and renumber. This motion also passed with the vote unanimous, as moved by Representative Keyser.

Representative Lory moved "do pass as amended" and the motion carried with the vote unanimous. Representative Kemmis moved to place the bill on the consent calendar. The motion carried with the vote unanimous. The bill will go to the consent calendar.

HOUSE BILL NO. 203: It was noted that the sheet of new amendments presented would supersede the earlier ones. Representative Anderson moved the adoption of the amendments. The motion carried with the vote unanimous after Larry explained them and following discussion.

Representative Anderson moved "do pass as amended" and the motion carried with the vote unanimous.

HOUSE BILL NO. 223: Representative Keyser questioned page 3, line 15, the California statute was discussed offered an amendment but then withdrew it.

Representative Keedy moved an amendment on page 3, line 15, to strike "cut". Representatives Uhde and Anderson talked in support of the amendment. After some further discussion the question was called and the roll call vote of 12 to 7 carried.

Yes: Anderson  
Curtiss  
Day  
Holmes  
Keedy  
Kemmis  
Uhde

No: Conroy                      Rosenthal  
Daily                          Roth  
Eudaily                       Seifert  
Iverson                        Teague  
Keyser                         Scully  
Lory  
Pavaovich

Representative Kemmis offered an amendment on page 3, line 19, following "employee" insert "or other telephone company official. The amendments presented by the telephone company were moved and carried with the vote unanimous.

Representative Lory moved "do pass as amended" and the motion carried with the vote unanimous.

HOUSE BILL NO. 225: Representative Scully read a letter from Tom Honzel (copy attached). Representative Conroy moved the stockgrowers amendments be adopted. Representative Day moved a substitute motion on line 12 insert

# STANDING COMMITTEE REPORT

January 24,

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVEAL  
LAWS IN TITLE 1, MCA, COMPOSED OF GENERAL LAWS AND  
DEFINITIONS; REPEALING SECTIONS 12-212 AND 93-1102-1  
1947; AND REPEALING SECTIONS 1-5-501 THROUGH 1-5-507, M.

Respectfully report as follows: That We unanimously recommend that HOUSE

Introduced copy, be amended as follows:

1. Page 3, lines 9 and 10.  
Following: line 8  
Strike: lines 9 and 10 in their entirety  
Renumber: subsequent subsections
2. Page 8, line 18 through line 7, page 9.  
Strike: section 10 in its entirety  
Renumber: all subsequent sections

AND AS AMENDED  
DO PASS

A motion was made and passed unanimously  
to place HOUSE BILL NO. 194 on the CONSENT

HOUSE BILL NO. 194  
INTRODUCED BY MANUEL  
BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS IN TITLE 1, MCA, COMPOSED OF GENERAL LAWS AND DEFINITIONS; REPEALING SECTIONS 12-212 AND 93-1101-1, R.C.M. 1947; AND REPEALING SECTIONS 1-5-501 THROUGH 1-5-507, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** Section 1. Relationship by affinity. (1) Unless the context requires otherwise, in this code "affinity" means the relation which one spouse has, by virtue of the marriage, to blood relatives of the other. Therefore, a person has the same relation by affinity to his spouse's blood relatives as his spouse has to them by consanguinity and vice versa.

(2) Degrees of relationship by affinity are computed in the same manner as degrees of relationship by consanguinity.

(3) Notwithstanding subsection (1), the term "affinity" includes the relation of husband and wife. Husband and wife are considered to be related by affinity in the first degree.

Section 2. Section 1-2-201, MCA, is amended to read:

"1-2-201. Statutes -- effective date. (1) Every statute, unless a different time is prescribed therein, takes effect on the first day of July ~~1-of-the-year-of~~ following its passage and approval.

(2) "Passage", as used in subsection (1), means the enactment into law of a bill which has passed the legislature either with or without the approval of the governor, as provided in the constitution."

~~Section 3. Section 1-5-101, MCA, is amended to read:~~

~~"1-5-101. By whom and where acknowledgments proof or acknowledgment may be taken. (1) The proof of an acknowledgment of an instrument may be made at any place within this state before a justice or clerk of the supreme court or a judge of the district courts.~~

~~(2) The proof of an acknowledgment of an instrument may be made in this state within the city, county, or district for which the officer was elected or appointed before either:~~

~~(a) a clerk of a court of record;~~

~~(b) a county clerk;~~

~~(c) a notary public;~~

~~(d) a justice of the peace; or~~

~~(e) a United States commissioner."~~

Section 3. Section 1-5-102, MCA, is amended to read:

"1-5-102. Acknowledgments ~~Proof or acknowledgment~~

1 ~~ACKNOWLEDGMENTS~~ taken outside this state. The proof of ~~or of~~  
 2 acknowledgment of an instrument may be made without ~~outside~~  
 3 this state but within the United States and within the  
 4 jurisdiction of the officer, before either:

5 (1) a justice, judge, or clerk of any court of record  
 6 of the United States;

7 (2) a justice, judge, or clerk of any court of record  
 8 of any state or territory;

9 ~~(3) a commissioner appointed by the governor of this~~  
 10 ~~state for that purpose;~~

11 ~~(4) a~~ (3) a notary public; or

12 ~~(5) any other officer of the state or territory~~  
 13 where the acknowledgment is made, authorized by its laws to  
 14 take such proof or acknowledgment."

15 Section 4. Section 1-5-105, MCA, is amended to read:

16 "1-5-105. Notarial acts by officers in the armed  
 17 services. (1) In addition to the acknowledgment of  
 18 instruments and the performance of other notarial acts in  
 19 the manner and form ~~and as~~ otherwise authorized by law,  
 20 instruments may be acknowledged, documents attested, oaths  
 21 and affirmations administered, depositions and affidavits  
 22 executed, and other notarial acts performed before or by any  
 23 commissioned officer in active service of the armed forces  
 24 of the United States with the rank of second lieutenant or  
 25 higher in the army or marine corps, with the rank of ensign

1 or higher in the navy or coast guard, or with equivalent  
 2 rank in any other component part of the armed forces of the  
 3 United States, by ~~at the request of~~ any person who either:

4 (a) is a member of the armed forces of the United  
 5 States;

6 (b) is serving as a merchant seaman outside the  
 7 limits of the ~~continental~~ United States ~~included within the~~  
 8 ~~48 states and the District of Columbia, excluding Alaska;~~  
 9 or

10 (c) is outside the limits of the United States of  
 11 America by permission, assignment, or direction of any  
 12 department or official of the United States government in  
 13 connection with any activity pertaining to the prosecution  
 14 of any war in which the United States is then engaged.

15 (2) Such acknowledgment of instruments, attestation of  
 16 documents, administration of oaths and affirmations,  
 17 execution of depositions and affidavits, and performance of  
 18 other notarial acts, heretofore or hereafter made or taken,  
 19 are ~~hereby declared to be~~ legally valid, and binding; and  
 20 instruments and documents so acknowledged, authenticated, or  
 21 sworn to ~~shall be~~ are admissible in evidence and eligible to  
 22 ~~record be recorded~~ in this state under the same  
 23 circumstances and with the same force and effect as if such  
 24 acknowledgment, attestation, oath, affirmation, deposition,  
 25 affidavit, or other notarial act had been made or taken

1 within this state before or by a duly qualified officer or  
2 official as otherwise provided by law.

3 (3) In the taking of acknowledgments and the  
4 performing of other notarial acts requiring certification, a  
5 certificate endorsed upon or attached to the instrument or  
6 documents which shows the date of the notarial act and which  
7 states, in substance, that the person appearing before the  
8 officer acknowledged the instrument as his act or made or  
9 signed the instrument or document under oath ~~shall--be~~ is  
10 sufficient for all ~~intents-and~~ purposes. The instrument or  
11 document ~~shall~~ is not be rendered invalid by the failure to  
12 state the place of execution or acknowledgment.

13 (4) The signature, rank, and branch of service or  
14 subdivision thereof of any such commissioned officer ~~shall~~  
15 must appear upon ~~such the~~ instrument or ~~--document~~ or  
16 certificate, and no further proof of the authority of ~~such~~  
17 ~~the~~ officer ~~so to so~~ act ~~shall--be~~ is required. Such action  
18 by ~~such the~~ commissioned officer ~~shall--be~~ is prima facie  
19 evidence that the person making ~~such the~~ oath or  
20 acknowledgment is within the purview of this section."

21 Section 5. Section 1-5-301, MCA, is amended to read:

22 "1-5-301. Who may prove execution of instrument. Proof  
23 of the execution of an instrument ~~when which has~~ not been  
24 acknowledged, may be made either by:

25 (1) ~~the party--executing--it--or--either~~ all of the

1 ~~parties who executed it or any one~~ of them;

2 (2) a subscribing witness; or

3 (3) other witnesses in cases mentioned in 1-5-302."

4 Section 6. Section 1-5-303, MCA, is amended to read:

5 "1-5-303. Facts which must be shown when offering  
6 proof of handwriting. The evidence taken under 1-5-302 must  
7 satisfactorily prove to the officer the following facts:

8 (1) the existence of one or more of the conditions  
9 mentioned in 1-5-302;

10 (2) that the witness testifying knew the person whose  
11 name purports to be subscribed to the instrument as a party  
12 and is well acquainted with his signature ~~and that it is~~  
13 genuine;

14 (3) that the witness testifying personally knew the  
15 person who subscribed the instrument as a witness and is  
16 well acquainted with his signature ~~and that it is~~ genuine;  
17 and

18 ~~(4) that the signature or signatures in question are~~  
19 genuine; and

20 ~~(4)(5) the place of residence of the witness."~~

21 Section 7. Section 1-5-304, MCA, is amended to read:

22 "1-5-304. Powers of officer taking proof of execution.

23 ~~(1) Officers authorized to take the proof of instruments are~~  
24 authorized in such proceedings to:

25 ~~(a) (1) administer oaths or affirmations as prescribed~~

1 in-the-Code-of-Civil-Procedure by law;  
 2 (b)(2) employ and swear interpreters; and  
 3 (c)(3) issue subpoenas as prescribed in-the-Code-of  
 4 Civil-Procedure by law;  
 5 (d) ~~punish--for--contempt-as-prescribed-in-the-Code-of~~  
 6 ~~Civil-Procedures~~  
 7 (2) ~~The-civil-damages--and--forfeiture--to--the--party~~  
 8 ~~aggrieved-are-prescribed-in-the-Code-of-Civil-Procedure~~  
 9 Section 8. Section 1-5-416, MCA, is amended to read:  
 10 "1-5-416. Powers and duties. It-is-the--duty--of--a A  
 11 notary public shall:  
 12 (1) when whenever requested, to demand acceptance and  
 13 payment of foreign, domestic, and inland bills of exchange  
 14 or promissory notes and protest the same for nonacceptance  
 15 or nonpayment and to exercise such other powers and duties  
 16 as by the law of nations and according to commercial usages  
 17 or by the laws of any other state, government, or country  
 18 may be performed by notaries and keep a record of such acts;  
 19 (2) to take the acknowledgment or proof of any powers  
 20 power of attorney, mortgages ~~mortgage~~, deeds ~~deed~~, grants  
 21 grant, transfers ~~transfer~~, and or other instruments of  
 22 writing instrument executed by any person and to give a  
 23 certificate of such proof or acknowledgment, endorsed on or  
 24 attached to the instrument;  
 25 (3) to take depositions and affidavits and administer

1 oaths and affirmations in all matters incident to the duties  
 2 of the his office or to be used before any court, judge,  
 3 officer, or board in this state;  
 4 (4) when ~~whenever~~ requested and upon payment of his  
 5 fees therefor, to make and give a certified copy of any  
 6 record in his office;  
 7 (5) to provide and keep an official seal, upon which  
 8 must be engraved the name of the state of Montana and the  
 9 words "Notarial Seal", with the surname of the notary and at  
 10 least the initials of his Christian given name;  
 11 (6) to authenticate with his official seal all  
 12 official acts, in-all-cases-when whenever the notary public  
 13 signs his name officially as a notary public, he must shall  
 14 add to his signature the words "Notary Public for the State  
 15 of Montana, residing at .... (stating the name of his post  
 16 office)" and must shall endorse upon the instrument the date  
 17 of the expiration of his commission."  
 18 ~~Section-10--Section--1-5-505-MCA--is-amended-to-read--~~  
 19 ~~"1-5-505--Powers-of-commissioners--Every-commissioner~~  
 20 ~~of-deeds-has--power--within--the--state--for--which--he--was~~  
 21 ~~appointed-to--~~  
 22 (1) ~~administer-and-certify-oaths~~  
 23 (2) ~~take-and-certify-depositions-and-affidavits~~  
 24 (3) ~~take-and-certify-the-acknowledgment-of or proof-of~~  
 25 ~~powers--of-attorney--mortgages--transfers--grants--deeds--or~~

other-instruments-for-record;

{4}--provide-and-keep-an-official-seal-upon-which-must  
be-engraved-his-name-the-words-"Commissioner-of--Deeds--for  
the--State--of-Montana"--and-the-name-of-the-state-for-which  
he-is-commissioned;

{5}--authenticate-with-his-official-seal--all--his  
official-acts."

Section 9. Section 1-6-103, MCA, is amended to read:

"1-6-103. Variation of oath to suit witness's belief.

{1}--Whenever-the-court-before-which-a-person-is-offered-as-a  
witness--is--satisfied--that--he--has--a-peculiar--mode--of  
swearing--connected-with-or-in-addition-to-the-usual-form-of  
administration--which--in-his-opinion--is--more--solemn--or  
obligatory--the--court--may--in-its-discretion--adapt-that  
mode;

{2}--When-a-person-is-sworn-who-believes-in-any-other  
than--the--Christian--religion--he-may-be-sworn-according-to  
the-peculiar-ceremonies-of-his-religion--if--there--be--any  
such. The court shall vary the mode of swearing OR AFFIRMING  
to accord with the witness's beliefs whenever it is  
satisfied that the witness has a distinct mode of swearing  
OR AFFIRMING."

Section 10. Section 1-11-102, MCA, is amended to read:

"1-11-102. Name of--recodification -- citation. The  
recodification recodified laws shall be known as the

"Montana Code Annotated" and may be cited as "MCA."

Section 11. Section 1-11-103, MCA, is amended to read:

"1-11-103. Effect of Montana Code Annotated. {1} The  
Montana Code Annotated shall be enacted as a reenactment of  
the Revised Codes of Montana, 1947, and the supplements  
thereto.

{2} The enactment of the Montana Code Annotated shall  
not:

(a) revive a law repealed or superseded before the  
effective date of the Montana Code Annotated;

(b) affect an act done, right accrued, or obligation  
incurred or imposed by law prior to the effective date of  
the Montana Code Annotated;

(c) affect any action, suit, or proceeding pending on  
such effective date;

(d) repeal statutes of a nongeneral, nonpermanent  
nature such as severability, construction, validating,  
repealing, or similar statutes omitted from the Montana Code  
Annotated.

{3} The Montana Code Annotated shall be given effect  
as a continuation of the Revised Codes of Montana and not as  
a new enactment. A defect in title of any act set out in  
prior laws and reenacted by the Montana Code Annotated is  
cured by such enactment.

{4} No implication or presumption of legislative

1 construction is to be drawn from the classification or  
2 arrangement of the Montana Code Annotated.

3 (5) Unless specifically adopted as such by the  
4 legislature, annotations, code commissioner notes,  
5 catchlines, or other editorial material included in the  
6 Montana Code Annotated may not be construed as part of the  
7 legislative text but are only for the purpose of  
8 convenience, orderly arrangement, and information.

9 (6) After enactment, the Montana Code Annotated,  
10 including all subsequent replacement volumes, shall be prima  
11 facie the official laws of Montana. In case of any  
12 inconsistency in meaning arising through omission or  
13 otherwise between the provisions of the Montana Code  
14 Annotated and the corresponding portion of the official  
15 enrolled bill on file with the secretary of state, effect  
16 shall be given to the official enrolled bill."

17 Section 12. Section 1-11-204, MCA, is amended to read:

18 "1-11-204. Duties of code commissioner. (1) Prior to  
19 January 1, 1979, the code commissioner shall recodify all  
20 the laws of a general and permanent nature appearing in the  
21 codes and session laws and prepare them for publication.

22 (2) Prior to January 1, 1979, the commissioner shall  
23 prepare and submit to the legislature a report which is  
24 certified by the commissioner as the "Official Report of the  
25 Montana Code Commissioner", together with a bill enacting

1 the Montana Code Annotated. A copy of the report and bill  
2 shall be deposited with the secretary of state. The report  
3 shall explain and indicate, in tabular or other form, all  
4 changes made during recodification, other than punctuation  
5 and capitalization, to clearly indicate the character of  
6 each change.

7 (3) ~~Prior to November--1--1976--and--prior--to the~~  
8 ~~November 1 of each--year--thereafter immediately preceding~~  
9 ~~each regular legislative session,~~ the commissioner shall  
10 prepare and submit to the legislative council a report, in  
11 tabular or other form, indicating the commissioner's  
12 recommendations for legislation which will:

- 13 (a) eliminate archaic or outdated laws;
- 14 (b) eliminate obsolete or redundant wording of laws;
- 15 (c) eliminate any duplications in law and any laws  
16 repealed directly or by implication;
- 17 (d) clarify existing laws;
- 18 (e) correct errors and inconsistencies within the  
19 laws.

20 (4) The commissioner shall cause to be prepared for  
21 publication with the Montana Code Annotated the following  
22 materials:

- 23 (a) Statutory history of each code section;
- 24 (b) Annotations of state and federal court decisions  
25 relating to the subject matter of the code;



1 (c) Such editorial notes, cross-references, and other  
2 matter as the commissioner considers desirable or  
3 advantageous;

4 (d) The Declaration of Independence;

5 (e) The Constitution of the United States of America  
6 and amendments thereto;

7 (f) Acts of congress relating to the authentication of  
8 laws and records;

9 (g) The Organic Act of the Territory of Montana;

10 (h) The Enabling Act;

11 (i) The 1972 Constitution of the State of Montana and  
12 any amendments thereto;

13 (j) The Ordinances relating to federal relations and  
14 elections;

15 (k) Rules of civil, criminal, and appellate procedure  
16 and such other rules of procedure as the Montana supreme  
17 court may adopt; and

18 (l) A complete subject index, a popular name index,  
19 and comparative disposition tables or cross-reference  
20 indexes relating sections of the Montana Code Annotated to  
21 prior compilations and session laws.

22 (5) After publication of the Montana Code Annotated,  
23 the code commissioner shall:

24 (a) annotate, arrange, and prepare for publication all  
25 laws of a general and permanent nature enacted at each

1 legislative session and assign catchlines and code section  
2 numbers to each new section;

3 (b) continue to codify, index, arrange, rearrange, and  
4 generally update the Montana Code Annotated to maintain an  
5 orderly and logical arrangement of the laws in order to  
6 avoid future need for bulk revision;

7 (c) prepare and submit to each legislature a report  
8 certified as the "Official Report of the Montana Code  
9 Commissioner--(year)" which indicates, in tabular or other  
10 form, all changes made during the continuous recodification,  
11 other than ~~punctuations, spellings~~ and capitalization, to  
12 clearly indicate the character of each change made since the  
13 ~~first--publication--of--the--Montana--Code--Annotated~~ last such  
14 report.

15 (6) From time to time the commissioner shall confer  
16 with members of the judiciary and the state bar relative to  
17 recodification procedures."

18 Section 13. Section 1-11-302, MCA, is amended to read:

19 "1-11-302. Updates of Montana Code Annotated. (1) The  
20 publication of updates to the Montana Code Annotated may be  
21 as a cumulative supplement or replacement volume or in any  
22 other format approved by the legislative council.

23 (2) The supplements or replacements shall be  
24 certified, ~~and--reported--to--the--legislature--by--the~~  
25 ~~legislative-council--approved-and-enacted-by-the-legislature~~

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1 as--prime--facie--the--official--laws-of-Montana; published,  
2 copyrighted, and deposited with the secretary of state--and  
3 referred--to--as--the-Montana-Code-Annotated. The supplements  
4 and replacements shall become effective on the date  
5 deposited with and certified to the secretary of state."

6 Section 14. Repealer. Sections 12-212 and 93-1101-1,  
7 R.C.M. 1947, are repealed. Sections 1-5-501 through 1-5-507,  
8 MCA, are repealed.

-End-